



Reprinted
February 8, 2008

ENGROSSED SENATE BILL No. 139

DIGEST OF SB 139 (Updated February 7, 2008 10:56 am - DI 107)

Citations Affected: IC 35-38.

Synopsis: Violation of probation and home detention. Specifies that a court may impose one or more sanctions on a probationer who violates the conditions of probation or home detention during the probationary period. Provides that an offender who is placed on home detention and who resides in a county adjacent to the county in which the sentencing court is located may be supervised by a community corrections program or probation department located in the county in which the sentencing court is located. Specifies that a probation department or community corrections program that supervises an offender on home detention is responsible for the expenses of the supervision.

Effective: July 1, 2008.

Bray

(HOUSE SPONSORS — FOLEY, LAWSON L, RICHARDSON)

January 8, 2008, read first time and referred to Committee on Judiciary.
January 10, 2008, reported favorably — Do Pass.
January 15, 2008, read second time, ordered engrossed. Engrossed.
January 17, 2008, read third time, passed. Yeas 46, nays 0.

HOUSE ACTION

February 4, 2008, read first time and referred to Committee on Judiciary.
February 5, 2008, amended, reported — Do Pass.
February 7, 2008, read second time, amended — Do Pass.

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ES 139—LS 6370/DI 106+



Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 139

A BILL FOR AN ACT to amend the Indiana Code concerning
courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-38-2-3, AS AMENDED BY P.L.156-2007,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2008]: Sec. 3. (a) The court may revoke a person's probation
4 if:

5 (1) the person has violated a condition of probation during the
6 probationary period; and

7 (2) the petition to revoke probation is filed during the
8 probationary period or before the earlier of the following:

9 (A) One (1) year after the termination of probation.

10 (B) Forty-five (45) days after the state receives notice of the
11 violation.

12 (b) When a petition is filed charging a violation of a condition of
13 probation, the court may:

14 (1) order a summons to be issued to the person to appear; or

15 (2) order a warrant for the person's arrest if there is a risk of the
16 person's fleeing the jurisdiction or causing harm to others.

17 (c) The issuance of a summons or warrant tolls the period of

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probation until the final determination of the charge.

(d) The court shall conduct a hearing concerning the alleged violation. The court may admit the person to bail pending the hearing.

(e) The state must prove the violation by a preponderance of the evidence. The evidence shall be presented in open court. The person is entitled to confrontation, cross-examination, and representation by counsel.

(f) Probation may not be revoked for failure to comply with conditions of a sentence that imposes financial obligations on the person unless the person recklessly, knowingly, or intentionally fails to pay.

(g) If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may **impose one (1) or more of the following sanctions:**

(1) Continue the person on probation, with or without modifying or enlarging the conditions.

(2) Extend the person's probationary period for not more than one (1) year beyond the original probationary period. ~~or~~

(3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

(h) If the court finds that the person has violated a condition of home detention at any time before termination of the period, and the petition to revoke probation is filed within the probationary period, the court shall:

(1) order ~~a sanction~~ **one (1) or more sanctions** as set forth in subsection (g); and

(2) provide credit for time served as set forth under IC 35-38-2.5-5.

(i) If the court finds that the person has violated a condition during any time before the termination of the period, and the petition is filed under subsection (a) after the probationary period has expired, the court may:

(1) reinstate the person's probationary period, with or without enlarging the conditions, if the sum of the length of the original probationary period and the reinstated probationary period does not exceed the length of the maximum sentence allowable for the offense that is the basis of the probation; or

(2) order execution of all or part of the sentence that was suspended at the time of the initial sentencing.

(j) If the court finds that the person has violated a condition of home detention during any time before termination of the period, and the

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petition is filed under subsection (a) after the probation period has expired, the court shall:

(1) order a sanction as set forth in subsection (i); and

(2) provide credit for time served as set forth under IC 35-38-2.5-5.

(k) A judgment revoking probation is a final appealable order.

(l) Failure to pay fines or costs required as a condition of probation may not be the sole basis for commitment to the department of correction.

(m) Failure to pay fees or costs assessed against a person under IC 33-40-3-6, IC 33-37-2-3(e), or IC 35-33-7-6 is not grounds for revocation of probation.

SECTION 2. IC 35-38-2.5-5.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5.5. (a) **Except as provided in subsection (b), a court in one (1) county** may not place an offender who resides in ~~a different~~ **another** county on home detention ~~unless: in the other county unless:~~

(1) the offender is eligible for home detention in the county in which the person resides; and

(2) supervision of the offender will be conducted by the probation department or community corrections program located in the county in which the offender resides.

~~(b) If an offender is:~~

~~(1) currently serving home detention in a county that operates a home detention program; and~~

~~(2) being supervised by a probation department or community corrections program located in a different county;~~

~~the court shall order that supervision of the offender be transferred to the probation department or community corrections program located in the county where the offender resides.~~

(b) If the offender described in subsection (a) resides in a county that is adjacent to the county in which the sentencing court is located, the supervision of the offender may be conducted by either the:

(1) probation department; or

(2) community corrections program;

located in the county in which the sentencing court is located.

(c) All home detention fees described in section 8 of this chapter shall be collected by the probation department or community corrections program that supervises the offender.

(d) A probation department or community corrections program that supervises an offender on home detention is responsible for

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1 **the expenses of the supervision.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 139, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 139 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 6, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 139, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, after line 12, begin a new paragraph and insert:

"SECTION 2. IC 35-38-2.5-5.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5.5. (a) A **sentencing court in one (1) county** may not place an offender who resides in a ~~different another~~ county on home detention ~~unless~~ **in the other county except as follows:**

(1) ~~If the offender is eligible for home detention in the county in which the person resides; and resides in a county adjacent to the county in which the sentencing court is located,~~ **supervision of the offender must be conducted by the probation department or community corrections program located in the county in which the sentencing court is located.**

(2) **If the offender resides in a county that is not adjacent to the county in which the sentencing court is located:**

(A) **the offender must be eligible for home detention in the county in which the offender resides; and**

(B) ~~supervision of the offender will~~ **must** be conducted by the probation department or community corrections program located in the county in which the offender resides.

~~(b) If an offender is:~~

~~(1) currently serving home detention in a county that operates a home detention program; and~~

~~(2) being supervised by a probation department or community corrections program located in a different county;~~

ES 139—LS 6370/DI 106+



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the court shall order that supervision of the offender be transferred to the probation department or community corrections program located in the county where the offender resides:

~~(c)~~ **(b)** All home detention fees described in section 8 of this chapter shall be collected by the probation department or community corrections program that supervises the offender.

(c) A probation department or community corrections program that supervises an offender on home detention is responsible for the expenses of the supervision."

and when so amended that said bill do pass.

(Reference is to SB 139 as printed January 11, 2008.)

LAWSON L, Chair

Committee Vote: yeas 7, nays 0.

HOUSE MOTION

Mr. Speaker: I move that Senate Bill 139 be amended to read as follows:

Page 3, line 14, delete "A sentencing" and insert "**Except as provided in subsection (b), a**".

Page 3, line 17, delete "except as follows:" and insert "**unless**".

Page 3, line 18, delete "If".

Page 3, line 18, reset in roman "is eligible for home detention in the county in".

Page 3, line 19, reset in roman "which the person resides; and".

Page 3, line 19, delete "resides in a county adjacent to".

Page 3, delete lines 20 through 23.

Page 3, line 24, delete "If the offender resides in a county that is not adjacent to".

Page 3, delete lines 25 through 27.

Page 3, line 28, delete "(B)".

Page 3, line 28, reset in roman "will".

Page 3, line 28, delete "must".

Page 3, between lines 38 and 39, begin a new paragraph and insert:

"(b) If the offender described in subsection (a) resides in a county that is adjacent to the county in which the sentencing court is located, the supervision of the offender may be conducted by either the:

(1) probation department; or

ES 139—LS 6370/DI 106+



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**(2) community corrections program;
located in the county in which the sentencing court is located."**

Page 3, line 39, reset in roman "(c)".

Page 3, line 39, delete "(b)".

Page 3, line 42, delete "(c)" and insert "(d)".

(Reference is to ESB 139 as printed February 5, 2008.)

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